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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

**METLAKATLA INDIAN
COMMUNITY**, a Federally Recognized
Indian Tribe,

Plaintiff,

v.

MICHAEL J. DUNLEAVY, Governor of
the State of Alaska, **DOUG VINCENT-
LANG**, Commissioner of the Alaska
Department of Fish and Game, and
JAMES E. COCKRELL, Commissioner
of the Alaska Department of Public Safety

Defendants.

Case No.: 5:20-cv-00008-SLG

**DECLARATION OF ALBERT G.
SMITH**

I, Albert G. Smith, declare as follows:

1. I am a member of the Metlakatla Indian Community. I am 47 years old. I am of Tlingit and Tsimshian lineage. I am the son of Henry G. Smith, who is a full-blooded Tlingit of the Raven Clan, and Berdine Smith, who is of Tsimshian lineage.

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My grandparents on my dad's side are Albert Smith, Sr., Tlingit of the Wolf Clan, and Ruby Smith, Tlingit of the Raven Clan. My grandfather on my mom's side is Bert May. Grandpa Bert was born on July 15, 1929. Grandpa Bert's mother was Blanche Davis and his great grandparents were Rodrick F. Davis, and Louise Winifried Davis. Grandma Davis was a Tlingit of the Bear Clan lineage, which historically owned the Unuk River. My grandpa Bert's great grandparents were married at Port Simpson, B.C. in 1847, which predates Father Duncan's arrival, and they later moved to Metlakatla with Father Duncan.

2. I served as a Council Member of the Metlakatla Indian Community for 6 years and have served as the Community's Mayor for going on 4 years.

3. I have read the Central Council of Tlingit & Haida Indians of Alaska's Motion to Dismiss, and the supporting Declarations. I was disappointed and hurt that at this very late stage of the case, the Central Council suddenly seeks to forever end our right to restore our undisputed, legally validated, implied, non-exclusive fishing rights that Congress reserved for our Community, reserved rights which were taken from us by the State through its limited entry program. And, the Central Council took this action with nothing to gain from it.

4. When the Alaska Native Claims Settlement Act (ANSCA) was in the works, my elder Councilmen and Councilwomen had long and difficult discussions about whether to participate in ANSCA. Ultimately, they chose not to participate, a

decision that I am eternally grateful for and proudly honor with each and every decision I was entrusted to make as a Councilmember and now as Mayor.

5. In stark contrast, the Central Council of Tlingit & Haida Indians, and indeed all Alaska Indians (“including Tsimshian Indians not enrolled in the Metlakatla Indian Community”), Villages and Tribes (other than the Metlakatla Indian Community), chose to participate in ANSCA. *See* 43 U.S.C. § 1602 – Definitions. In making that choice, Central Council, all its constituent Alaska Tribes and all its individual members agreed to extinguish all their aboriginal claims to land and water and hunting and fishing rights, in exchange for money and land. *See* 43 U.S.C. § 1603 – Declaration of settlement. Central Council knows this unfortunate truth.

6. Yet, despite that truth, Central Council now asserts that its Tlingit and Haida members have never given up their exclusive fishing rights, and that it somehow has a fishing right to enforce against the Community in this case. In my opinion, the Central Council’s opposition is an astonishingly obvious effort to have their cake and eat it too, a shocking disavowal of their participation in ANSCA and simply not true.

7. I was also astonished by some of the witness statements, wrongly asserting that the Community is seeking “traditional rights” and the right to fish anywhere, anytime and in anyway. Unfortunately, the Central Council and its witnesses do not understand our case. To be clear, the Community is not asserting an aboriginal property right. We are not seeking or claiming exclusive ownership of or access to an off-reservation fishing location “claimed” by a Tlingit or Haida Tribe. We are not

claiming aboriginal ownership of off-reservation property or territory previously claimed by any Tlingit or Haida (or seeking to deny or diminish any Tlingit or Haida claim to aboriginal property or territory). We are not seeking to fish in an unregulated manner anywhere the Community wants.

8. Rather, we are simply seeking to restore the fishing rights Congress reserved for the Community to continue to live as our original members, including the Tlingit and Haida, had always lived and to engage in the newly emerging commercial fisheries.

9. What makes even less sense about the Central Council's Motion and its witnesses' statements is that, despite giving up all of their property claims through ANSCA, they assert a historical view of their territory and aboriginal property rights about which we generally agree.

10. It saddens me that not only did Central Council unnecessarily attack its tribal neighbor, but it seems to have forgotten that many Tlingits and Haidas were among the founding members of the Community in 1891 and are among our membership today, including myself and my ancestors. The Central Council's attack is against their own people and is based on a falsehood of continued ownership to fishing locations.

11. My great great grandmother Louise Davis (Herman)'s family spent the winters in a Cape Fox village near Kirk Point. They later moved to Saxman. The family traveled to the Unuk River in the summer, where a red sunburst petroglyph located on

the drop off of the mouth of the river marked my family's ownership. The petroglyph still exists and is around 1,500 years old. I attach a picture of that petroglyph as Exhibit A, taken in 1997, showing my grandpa Bert's half-brother Walter Wagner standing next to it. The nearby Herman Creek was named after Louise Davis's uncle.

12. As a young boy, I remember when my great uncles Louie and Walter Wagner would harvest eulachon from the Unuk River. This recurring tradition was described in Dr. Langdon's Expert Report on pages 16-20. There would be an energy in the Community when great uncles Louie and Walter would radio ahead that their boat was coming home. People would start lining up at the dock to get some fresh eulachon. I too got excited and would run down to the dock to help them unload. We would give the eulachons to Community members, asking for a few dollars per pail to just recover my great uncles' fuel and food costs. I remember that each night after my great uncles came home with the eulachons, the whole town would smell like fried eulachon. And then, over the next couple of days, the whole town smelled of eulachon getting smoked in the peoples' smokehouses.

13. When I was a teenager, I went with my great uncles to harvest eulachon on the Unuk River. They taught me how to harvest the fish, using jet skiffs, beach seines and brailing the fish with dip nets. My great uncles stopped in Ketchikan on the way home which they always did, to give eulachon to Ketchikan folks, including people from Saxman. They would stop at the Ryus float. There was always excitement as their boat(s) approached Ketchikan and, just like in Metlakatla, my uncles would radio ahead

that they were coming, and everyone knew the eulachon boat(s) were almost there.

When they got there the line would be down the dock, up the ramp and down the street with people excited to get fresh eulachons.

14. My earliest memories of fishing were when I was 5 or 6 years old. I remember my mom and dad taking me to a creek across from the town and showing me how to beach seine for sockeye. We had a small skiff that had a bucket at one end of the seine net and round-hauled sockeye jumps. I remember going to the beach to clean the fish, and while were doing that my mom showed me how to use clam shells to scrape the blood line. Traditional subsistence fishing was part of our family's history and our community. Everyone did it. We would harvest octopus to eat and it makes the best halibut bait, we would smoke fish we caught to eat in the winter and after preparing it, we'd take the cans down to the Annette Island Packing Company (AIPC) and they'd cook it for us. The whole Community did the same thing. We'd harvest clams of all kinds (such as steamer, butter, razor, and geoduck), cockles, Dungeness crab, black seaweed, gumboots, abalone, rock scallops, sea cucumbers and sea asparagus, all for personal consumption.

15. Grandpa Bert also told me how our ancestors pre-contact would trade eulachon. First, after harvesting them, they would smoke the fish and weave about 20 or so smoked eulachons on many cedar sticks of 20 each. They would travel in canoes to Prince of Wales Island and for weeks paddle around the whole island, trading the smoked eulachons for dried halibut. Then they would go home. When they got home,

the eulachon grease would be ready and they'd head back over to Prince of Wales and again take weeks to canoe around the island and trade the grease for fresh-dried seaweed. The timing of the seasons made this tradition work perfectly because the eulachons would be ready in the spring, and the best halibut fishing was also in the spring. Grandpa Bert told me this was an annual tradition that had recurred over many many years.

16. As Mayor, I continue those traditions. We secured funding to purchase herring eggs, salmon, and halibut to give to our people. Maintaining the subsistence lifestyle of eating fresh seafood including herring eggs, salmon, and halibut, is important to me. It is my honor as leader of the Community to bring back these traditions and keep them alive. As my mom has said, I am bringing back the "old ways." I remember Grandpa Bert telling me that it was like a religious experience when the first fish came back it meant that spring was here and our people could have fresh sea food again. As we're handing out the fresh seafood, with the thank-yous and smiles on everyone's faces, I could feel what Grandpa meant. This tradition is in our blood.

17. I grew up fishing with my grandpa Bert on his seine boat. I started when I was around 6 years old and was earning a ¼ share. My first jobs were plunging from the power skiff, which my dad was running, and then being the jump-off man, plunging on the big boat's deck to keep the salmon in the seine, and then, at the end of the day, pitching off our catch of salmon into the unloading brailer, which was hoisted to the packer. I remember being proud that I could pitch 60 fish to my dad's and the other

crew members' 100. By the time I was 11, I had worked my way up to earn a full share of the catch, and when I was 12 or 13, I started to run the power skiff. During my early years fishing with my grandpa Bert, we would fish for salmon and as I got into my teenage years we would also fish for black cod in Clarence Straights, and in Sitka Sound for sac roe herring, and on the outside coast for halibut. We would also do subsistence trolling and crabbing (Dungeness and king crab) all over Southeast Alaska during our fishing travels. We always carried crab pots and trolling gear with us because we wanted to eat fresh seafood, just like the old ways. During the halibut derby days (pre-IFQ), I remember one time when I was a teenager we were fishing for halibut outside of Baker Island, near Cape Bartolome. It was gusting hard 60 to 80 mph, 25+ foot seas, and I got stuck by the quills of a quillback rockcod. The quills went so deep into my shoulder that the fish stuck there. I had to pull it out. It made my whole arm go numb. During the whole time I fished with my grandpa Bert, we never encountered anyone, including Tlingit or Haida, that forced us off or asked us to leave any fishing grounds. From my recollection, all the natives always stuck together.

18. When I was fishing with my grandpa Bert, during our long wheel-watches moving between fishing areas, he would tell me where he fished in the early days, from around the 1930s through the 1970s. He told me that he and the other fishermen from Metlakatla used to fish all over Southeast Alaska. The fleet would start in the northern part of Southeast Alaska in the spring and work their way down, not arriving to the Reserve until early August. Grandpa Bert told me that he had fished near Icy Strait,

Chatham Strait, Pearl Strait, Noyes Island, Dall Island, Cordova Bay, Bronson Bay, Nunez Rocks, Cape Chacon, McClean's Arm, Stone Rock Bay, Moira Sound, Cholmondeley Sound, Portland Canal, Nakat Inlet, Boca de Quadra, Behm Canal, Mary Island, Duke Island, Percy and Hotspur Island, and Gravina Island. Grandpa Bert also told me that he would hunt seals, mink and otters all over Southeast Alaska. He never told me that any fishing areas required permission from anyone, including any Tlingit or Haida.

19. After I got my own seine boat, and not having a limited entry permit, I wasn't able to go the same places that I had fished with my grandpa Bert. During that time, the fishing on the Reserve got worse and worse. But I and the others who didn't have a limited entry permit couldn't leave the Reserve to go where the fish were, which is how my grandfather and the rest of the fleet had fished since 1891. Ultimately our packing plant (AIPC) was forced to shut down, which up to that point had been the longest continuously running business enterprise in Indian country. As a fishing community, losing the economic engine of our packing company (AIPC), along with all the jobs and support it provided our Community, was devastating. As a result, the Community's long-term survival was at risk.

20. In the 1891 Act establishing the Annette Islands Reserve, Congress's purpose was to create a permanent home for my ancestors and their future generations from Old Metlakatla and other Alaska Natives who had joined, which included numerous Tlingit and Haida whose descendants still live among us today. To ensure

that purpose was fulfilled, Congress foresaw the importance of a fish processing plant (now AIPC) to the Community's long-term survival and necessarily reserved for the Community the right to fish in areas where we needed to fish to satisfy our current and future needs. Before limited entry, the old-timers had the freedom to fish where the fish were, which sometimes was on the Reserve and sometimes outside. But that is the nature of salmon, they migrate. The State's limited entry program has created a cage around the Reserve, which is against the federal purpose, Congress's intent, and the fishing rights Congress reserved for the Community to fulfill the federal purpose.

I hereby declare that the above statement is true to the best of my knowledge and belief and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 14 day of July 2025.

By: /s/ 
Albert G. Smith

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **DECLARATION OF ALBERT G. SMITH** was filed with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. Participants in Case No.: 5:20-cv-00008-SLG who are registered CM/ECF users will be served by the CM/ECF system.

DATED July 21, 2025.

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